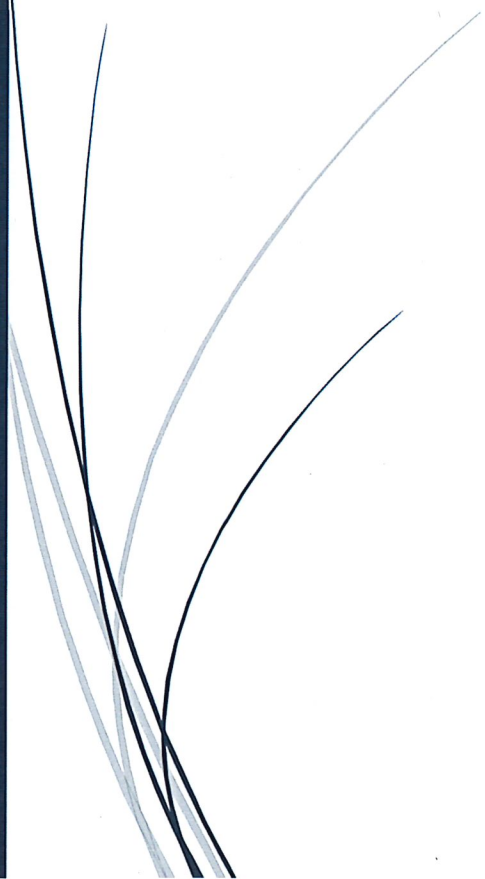




Version 1.1
December 2019

Supplemental Environmental Project (SEP) Policy

Kansas Department of Health and Environment
Division of Environment
Bureau of Air



I. Introduction

As part of an enforcement action settlement, an alleged violator of the Kansas Air Quality Statutes and Regulations may agree to participate in a Supplemental Environmental Project (“SEP”) to offset a portion of a civil penalty associated with the enforcement action. SEPs are an opportunity to improve the community and environment through projects; educate and raise awareness of environmental concerns; and prevent, remediate, or reduce emissions of pollutants that adversely impact public health or the environment. SEPs are beneficial to alleged violators because they are an opportunity to improve relations with the local community and may qualify as a tax exemption. SEPs, which the Bureau of Air (“BOA”) will propose to the Kansas Department of Health and Environment (“KDHE”) management for approval, will be related to air quality and air pollution prevention or reduction. However, KDHE may also consider SEPs that benefit other environmental media. SEPs are environmentally beneficial projects that an alleged violator agrees to undertake as part of an enforcement action, but that the alleged violator is not otherwise legally required to perform. All SEPs must result in improvements to the environment or public health. KDHE and BOA follow certain criteria in consideration of what constitutes an acceptable SEP, the value of SEPs, and civil penalty offset. This document describes these criteria and how SEPs are carried out. Each proposed enforcement action and/or SEP must be approved by the Director of BOA, the Director of the Division of Environment, and the Secretary of KDHE before becoming final. During the process of negotiating and proposing enforcement actions and/or SEPs, agency management may revise the proposed action at any time. This policy is intended for guidance purposes only, with final decisions made by KDHE management.

II. SEP Approval Process

A. Enforcement Action

Once enforcement by KDHE has begun, the alleged violator will generally have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary (“CAO”) for the resolution of the enforcement action; and will include an agreed civil penalty to be paid by the alleged violator. Mutually agreeable SEPs may be a component of the proposed CAO and offset a portion of the civil penalty.

B. Selection of Proposed Projects

Possible SEPs may be proposed by the alleged violator or from a suggested list provided in Section V of this document. Ultimately, one or more acceptable SEPs may be determined to be mutually acceptable to all participants, and implementing details related to the SEPs are developed and mutually agreed upon. BOA consideration of a proposal is based on the criteria described in Section III, and offsetting of penalties is described in Section IV. After review by the Air Compliance and Enforcement Section, the proposed SEP must be approved by the BOA director.

C. Approval Process

The mutually agreeable SEPs are incorporated into the proposed CAO, drafted by the BOA. Within this draft CAO, the amount of civil penalty offset and conditions of the SEP are stated. The implementation requirements of the SEP will be set forth in the Schedule of Compliance section of the CAO. Progress reports and progress deadlines are usually included as requirements. The CAO will be sent to the BOA Director, the Director of the Division of Environment, and the KDHE Legal office for review and approval, or suggested revisions. If the alleged violator is agreeable to all components and requirements of the proposed CAO, a responsible official of the organization will sign the agreement and return it to KDHE Legal office. The responsible official will also sign an affidavit under penalty of perjury attesting to the SEP's compliance with this policy. Upon the final signature by the Secretary of KDHE, the CAO is executed.

D. Implementation of Approved SEP

With the execution of the CAO, the progress of the SEP will be monitored by KDHE-BOA until completion. Failure to complete the SEP, submit required progress reports, or meet conditions contained therein will be a violation of the CAO. Violations will have the potential for additional enforcement action, including civil penalties. The agreement will contain provisions for emergency and unforeseen circumstances that cause a delay or failure in completion of the SEP or the CAO, such as *force majeure* at a facility (i.e., severe weather, fires, explosions, etc.). The alleged violator is responsible for presenting acceptable cause and effect statements related to force majeure or other delay in progress. A *force majeure* event may result in agreement by KDHE to amend the CAO to extend deadlines or modify SEP plans. Regardless of a *force majeure* event, failure to complete a SEP will require full payment of the assessed civil penalty. The CAO also has provisions for Dispute Resolution between all parties. The CAO will be terminated when all requirements contained in the agreement have been met, as determined by KDHE.

III. Criteria for an Acceptable SEP

The following criteria are evaluated and serve as guidance by BOA when considering a SEP as a component to resolve enforcement actions:

A. Requirements

- The SEP must be environmentally beneficial to the State of Kansas and its residents; it must improve and protect the environment as well as reduce environmental risks to the public.
- The SEP is undertaken in conjunction with the settlement of a CAO action only. An environmental project which has already been completed, for which a commitment has been made, or has been budgeted for by the violator is generally not acceptable for consideration as a SEP.
- The SEP must go beyond the minimum compliance with the law, whether air quality, other environmental or any other state or federal law.
- SEPs must not adversely affect another environmental concern in the process of implementation.

- The CAO may require the source to have, or develop, an Environmental Management System (“EMS”) as a consideration for a SEP within a CAO.
- The review, oversight, or monitoring of SEPs must be within the resources and capabilities of BOA and must provide enough environmental benefit to justify oversight.

B. Other Considerations

- Creating a SEP that will benefit the communities affected by the violation
- Utilizing public input on community improvement projects
- Creating a SEP that involves the same environmental media as the violation
- The contributions of the SEP toward the environmental priorities of BOA
- The direct, indirect, or mixed benefits of the SEP

IV. Allowable Penalty Offset and Offset Credits

The following criteria are evaluated and serve as guidance by BOA when considering allowable penalty offsets and offset credits for a SEP.

A. Allowable Penalty Offset

After BOA staff has reviewed a SEP proposal for the criteria list in Section III, the allowable penalty offset will be determined by BOA as a percentage of the overall penalty. The allowable penalty offset is the maximum percentage of the overall penalty that can be reduced through a SEP. The table below lists the allowable penalty offset as a percentage of the overall penalty. Example calculations can be found in Section IV (C).

	Maximum	Minimum
Government / Non-Profit	100%	\$2,000
For-Profit	50%	\$4,000

Table 1. Maximum allowable penalty offset as a percentage and minimum allowable penalty offset as a dollar amount. Under certain circumstances, KDHE may increase the maximum allowable penalty offset.

1. Local Government:

Applicable local governments may be eligible to apply the cost of correcting a violation toward a SEP. To qualify, the local government must have not committed a violation at the same site with the same underlying cause within the last five years and have not agreed to perform the project before the date of agreeing to enter into a consent agreement. If there is no cost to correcting the violation, a SEP may include environmentally focused upgrades of their own property.

B. Offset Credits

Next, BOA calculates the number of offset credits earned per dollar spent on a SEP. For each offset credit earned, one dollar is removed from penalty. The number of offset credits earned per dollar spent are calculated using the conversion table below. Example calculations can be found in Section IV (C).

	Direct Local	Direct Non-local	Mixed Local	Mixed Non-local	Indirect Local	Green Schools
Government / Non-Profit	1.00	0.50	0.75	0.50	0.50	1.00
For-Profit	0.75	0.50	0.75	0.50	0.50	1.00

Table 2. Number of offset credits earned per dollar spent on a SEP.

Direct Benefit SEPs are defined by benefits that directly impact the environment in a quantifiable manner. Direct Benefit SEPs do this through projects that prevent, remediate, or reduce emissions of pollutants that adversely impact public health or the environment.

Indirect Benefit SEPs are defined by benefits that do not directly impact the environment. These SEPs include part beautification projects and enhancement to local community.

Mixed Benefit SEPs are those that include both direct and indirect impacts.

Local Benefit* SEPs are defined as those taking place in communities within 50 miles of the alleged violator's facility.

Non-local Benefit* SEPs are defined as those taking place in communities further than 50 miles from the alleged violator's facility.

* All SEPs, whether local or non-local, must provide their benefits primarily in the State of Kansas.

C. Examples Calculations

1. A facility has a CAO penalty of \$50,000 and they are planning to fund an air pollution awareness class, which costs \$10,000 to fund, at the local library as part of their SEP. According to Table 1, they are eligible for a 50% allowable penalty offset, which is \$25,000. At a minimum, they are required to meet a \$4,000 penalty offset. The local awareness would classify as an indirect local SEP and the facility is a for-profit business. According to Table 2, they would receive 0.50 offset credits per dollar spent. This would amount to 5,000 offset credits, which is above the minimum \$4,000 penalty offset. The penalty value after the SEP would be \$45,000.

2. A county government has a CAO penalty of \$5,000 and they are planning on planting \$3,000 worth of trees along the edge of the local baseball field for their SEP. According to Table 1, they are eligible for a 100% allowable penalty offset. At a minimum, they are required to meet a \$2,000 penalty offset. The SEP would qualify as a direct local project. According to Table 2, they would receive 1.00 offset credits per dollar spent. This would amount to 3,000 offset credits, which is above the minimum \$2,000 penalty offset. The penalty value after the SEP would be \$2,000.

V. Preapproved and Example Projects

Listed below are projects preapproved by KDHE for use as a SEP, as well as example projects.

Preapproved Projects

- [Kansas Green Schools \(www.kansasgreenschools.org\)](http://www.kansasgreenschools.org)
- [Nature Conservancy \(www.nature.org/en-us/about-us/where-we-work/united-states/kansas/\)](http://www.nature.org/en-us/about-us/where-we-work/united-states/kansas/)

Example Projects

- Fugitive dust control (paving parking lots, roads)
- Solar panel or wind turbine project
- Park beautification projects (pollinator gardens, etc.)
- Retrofit local school bus diesel engines
- Purchasing more fuel efficient or electric vehicles for local school fleet
- Assist in or implement a recycling program in a local school or community
- Purchase land for parks and natural areas
- Conduct a household hazardous waste collection event
- Purchase and retirement of emission credits
- Wood stove changeout program

VI. Contact Information

If you would like additional information, contact the Bureau of Air:

Bureau of Air

[Air Compliance and Enforcement Section](#)

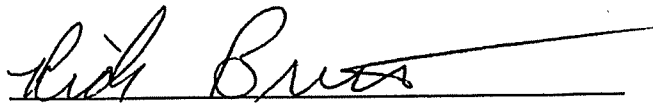
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VII. Approval of SEP Policy

A handwritten signature in cursive script, appearing to read "Rick Bruns", is written over a horizontal line.

Director, Bureau of Air

12/17/2019

Date